

20.11.2024
Item No.
AD 7
Saswata

C.O. 1094 of 2024

**Krishna Vilas
versus
Rakesh Sethi**

Mr. Rahul Karmakar
Mr. Sourav Gucchait

...For the plaintiff/petitioner

Mr. D. Talukder

...For the defendant/opposite party

1. Affidavit of service filed in Court today is retained with the record.

2. The instant revisional application has been filed, inter alia, challenging the order dated 19th February 2024 passed by the Learned Civil Judge, Sixth Bench, City Civil Court at Calcutta in Title Suit no. 1034 of 2017. To understand the scope of the revisional application, it is necessary to bring forth the facts leading to passing of such order.

3. In the suit for declaration and permanent injunction, the plaintiff/petitioner was able to secure an ex parte order of an interim injunction on 7th August 2017, thereby restraining the defendant/opposite party from creating any disturbances and/or hindrance in any manner whatsoever by entering into the suit property till 6th September 2017. The said order was extended from time to time on contest. On 4th September 2023, although the petitioner had filed an application for extending the ad interim order of injunction, at the time of call the petitioner remained unrepresented. Consequentially, the application for extension was rejected and the petitioner was directed to show cause as to why the injunction petition shall not be rejected. On the returnable

date, i.e. on 5th January, 2024, the petitioner not only filed a petition praying for acceptance of the show cause but also a petition praying for extension of the ad interim order of injunction and another application praying for recall of the order no. 28 dated 4th September 2023. The petitioner would, however, submit that the application for extension was in fact an application for re-imposition of the ad interim order of injunction which was granted on 7th August, 2017.

4. On 5th January 2024, the Learned Judge while accepting the show cause fixed a further date for hearing of the petition for extension of the interim order and for recall of the order dated 4th September 2023. The defendant/opposite party was granted liberty to file written objection.

5. By the order impugned, the Learned Judge had finally decided the above applications by, inter alia, holding that since the *ad interim* order was not extended on 4th September 2023, the same stood vacated, the petitioner's recourse was to file an appeal therefrom and an application under Section 151 of the Code of Civil Procedure was not maintainable. As such prayer for recall of the order dated 4th September 2023 could not be allowed as being not maintainable.

6. Mr. Karmakar, learned advocate appearing for the plaintiff/petitioner would submit that there has been no adjudication of the application for extension of the interim order. On 4th September 2023 since the petitioner was not represented, such application was rejected though the same ought to have been dismissed for default.

7. He submits that the petitioner had forthwith applied for recall of the order dated 4th September 2023 with a prayer for re-imposition of the ex parte ad interim order of injunction granted on 7th August 2017. According to him, the Learned Judge, while rejecting such application had failed to exercise the jurisdiction vested in him in dismissing the same by treating it as not maintainable. It is submitted that there was no cause for the Learned Judge to conclude that on 4th September 2023 the interim order in fact stood vacated. In the facts noted hereinabove, he prays for setting aside of the impugned order and for re-imposition of the *ad interim* order, as was prevailing on 4th September 2023.

8. Mr. Talukder, learned advocate appearing on behalf of the defendant/opposite party would submit that the plaintiff/petitioner was only interested in enjoying an ex parte ad interim order of injunction which was being continued from time to time and was not interested in having the injunction application heard out. On 4th September 2023 no adequate steps were taken by the petitioner to represent himself before the learned Court. The Learned Court rightly, by recording that none found on behalf of the petitioner at the time of hearing at 3.10 P.M., had rejected the said application. He submits that once, an application for extension is rejected, there is no scope to recall the same by invoking the provisions of Section 151 of the Code of Civil Procedure. Rejection of an application for extension constitutes rejection of the grant and continuance of injunction and as such is an appealable

order within the meaning of Order XLIII of the Code of Civil Procedure.

9. In any event, it is submitted that order of rejection of an application for extension of ad interim order also constitutes vacating within the meaning of Order XXXIX Rule 4 of the Code of Civil Procedure and on such ground also, the order is an appealable one. According to him, the Learned Judge has rightly dismissed the application filed under Section 151 of the Code of Civil Procedure and there is no scope for interference. He submits that although, hearing of the injunction application is not complete, there is no subsisting interim order and as such, the balance of convenience also does not require re-imposition of the order of injunction.

10. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, it appears that the petitioner was able to obtain an ad interim order of injunction on 7th August 2017. Such order was extended from time to time in presence of the defendant / opposite party. Records do not reveal that any application for vacating of the ad interim order was filed at any stage. It would transpire that on 4th September 2023 the interim order was not continued further since, the petitioner was not available at the time of hearing, the application for extension of the ad interim order being not moved, the same was rejected. The aforesaid rejection in my view does not constitute adjudication. The aforesaid rejection in my view in effect constitutes dismissal in the form of default, since the petitioner was admittedly not

present on the said date and there is no adjudication of the application for extension on merit.

11. It, however, appears that the petitioner had on the returnable date not only filed an application for recall of the order dated 4th September 2023 but had also prayed for re-imposition of the interim order that was subsisting. A petition for acceptance of the show-cause was also filed. Although, the learned Judge by the order impugned has proceeded to accept the show-cause, as to why the injunction application should not be rejected, however, on the said date hearing of the application seeking recall of the order dated 4th September, 2023 and consequential re-imposition of ad interim order was deferred, and liberty was granted to the defendant to file written objection. I am of the view that in the given facts, the above order cannot constitute an order for vacating the order of injunction especially when no reasons have been assigned as to why the *ad interim* order was not being continued. What is apparent and clear from the order dated 4th September, 2023 is that the ad interim order was not continued because the application for extension was not moved by the petitioner.

12. By the impugned order the learned Judge in effect by treating the rejection of the application for extension of interim order, as a decision on merit of not continuing with the interim order, has held that the ad interim order of injunction stood vacated on that date. Admittedly, there was no application for vacating of interim order. It is also not a case of the opposite party that the learned Judge on

the basis of any subsequent event took a decision not to continue with the ad interim order.

13. Having regard thereto, it cannot be said that the order dated 4th September 2023 rejecting the plaintiff/petitioner's application for extension of the ad interim order for default, by any stretch of imagination constituted an order within the meaning of Order XLIII of the Code of Civil Procedure. In the given facts the learned Judge was obliged to hear out the application for re-imposition of interim order on merit. From the order sheet there is no reflection that there was any change in circumstances not to re-impose the ad interim order.

14. In my opinion the Learned Judge had failed to exercise jurisdiction in treating the application filed by the plaintiff/petitioner for re-imposition of the impugned order as not maintainable. Having regard to the aforesaid, the above order cannot be sustained. Further, taking into consideration the fact that the petitioner had been enjoying an ad interim order of injunction since 7th August 2017 and the opposite party having not filed any application for vacating and having not objected to the continuance of the interim order on 4th September 2023 and there being no change in circumstances as pointed out by Mr. Karmakar, in the fitness of things and considering the balance of convenience it is necessary to re-impose the ad interim order as was subsisting on 4th September 2023. Accordingly, the ad interim order passed on 7th August 2017 is re-imposed.

15. Since the parties would submit that the hearing of the injunction application is fixed on 3rd December 2024, it

is expected that the Learned Court shall make endeavour to dispose of the injunction application on the said date on its own merit independent of the observations made hereinabove, without granting unnecessary adjournments to either of the parties.

16. With the above observations and directions, the revisional application being C.O. 1094 of 2024 is disposed of.

17. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)